

WHAT VICTIMS SHOULD KNOW ABOUT THE APPEALS PROCESS

What is the appeals process?

The appeals stage of a criminal case includes all legal proceedings during which a defendant tries to overturn a conviction. The defendant's goal is to gain freedom, a new trial or a reduced sentence.

What is an interlocutory trial?

Most appeals are initiated by criminal defendants and occur after a conviction and sentencing. But occasionally, an appeal of a legal issue may be addressed before the actual trial of a case begins. These are known as interlocutory appeals. Interlocutory appeals are permitted when the legal issue involved may determine the outcome of the case.

How long does the appeal process take?

The appellate process can be lengthy and complex because several courts might eventually review the case. The entire process can take years to complete before the case will be considered final.

What is the difference between a trial and an appeal?

A trial results in the conviction and sentencing of the defendant. The county prosecutor is the state's representative who brings the charges against the defendant and presents the case in court at the county level.

The primary function of the jury (or the judge in a bench trial) is to determine which party's version of the incident will be accepted. At that point, the facts are settled for the life of the case unless there is a retrial – this is an important fact to remember.

An appeal, on the other hand, is a review of a trial. In an appeal, the defendant seeks to prove legal errors were made that are substantial enough to justify a reversal of the conviction or a reduction of the sentence. The appellate court will not reweigh the evidence or retry the facts of the case, but will limit their review to legal issues.

Who is the appellant and who is the appellee?

The party that files the appeal is the appellant, and the party that responds to the appeal is the appellee. In the majority of cases, the criminal defendant is the appellant, and the state is the appellee.

Office of the **INDIANA** ATTORNEY GENERAL

After defendants are convicted of crimes and sentenced, they can choose to appeal. When they do, the attorney general's office represents the state and can also help victims understand and cope with the appeals process.

The Victim Advocacy Program is a service of the attorney general's office that assists victims of crimes during the appeals stage. It keeps victims informed and involved throughout the appellate process, and can also help provide assistance from other sources.

The information on the following pages is a part of the assistance offered by the Victim Advocacy Program. It answers many questions about criminal appeals, and serves as a guide to the process.

Victim **ADVOCACY** PROGRAM



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...and justice for all



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THE STEPS OF THE APPEALS PROCESS

The appeals process takes time. For victims of crime, that can be discouraging. But knowing what to expect next can help make life a little easier. The following information is an overview of the appeals process.

1. Initiating the Appeal

A direct appeal is started by filing a “Notice of Appeal” in the trial court within 30 days of sentencing. A direct appeal is generally the first appellate review of the case. Cases in which a sentence of death or life without parole is imposed are taken directly to the Supreme Court of Indiana for decision. All other cases are taken to the Court of Appeals. There are timelines for the preparation and filing of the record of the trial and it may take 90 days or longer for completion.

2. Briefing

After the record is completed and filed, the appellant (generally the criminal defendant) files the “Brief of Appellant,” which is a written document explaining the legal errors believed to have been committed during the trial that justify overturning a conviction or reducing the sentence. The appellee (generally the state) then responds by filing a “Brief of Appellee.” Finally, the appellant is given the opportunity to file a “Reply Brief” in response to the arguments made by the appellee. The state’s briefs are prepared and filed by the deputy attorney general assigned to the Appeals Division of the Attorney General’s Office.

3. Oral Argument

In all capital cases (cases in which the death penalty has been imposed) and in a limited number of other cases, the appellate court may require the parties to appear before the court to argue their cases in person. The court may ask questions of the attorneys during the presentations, however, no evidence is taken and only the attorneys are permitted to address the court. The state’s case is typically presented by the deputy attorney general who wrote the state’s brief.

4. Decision

Following the filing of the parties’ briefs and after any oral arguments, the case awaits the decision of the appellate court. The court will decide the case by issuing an “opinion,” which is a discussion of the legal issues raised by the parties and the court’s resolution of those issues. On the basis of those issues, the appellate court will decide whether to “affirm” or “reverse” the judgment of the trial court.

If the court affirms the trial court’s judgment, the conviction is upheld.

If the appellate court reverses the trial court, then the conviction is overturned and the case is remanded (meaning the trial court must either release, retry or resentence the defendant, or revise the conviction). Depending on the separate legal issues, the appellate court may modify the conviction or sentence on appeal.

5. Rehearing, Transfer and Certiorari

If the appeal was heard first by the Court of Appeals, the losing party may petition the Court of Appeals to rehear the case, pointing out errors in the opinion. Following the decision of the Court of Appeals on the “Petition for Rehearing” the party who loses the rehearing may ask the Supreme Court to take the case if specific, limited grounds are present. This is known as a “Petition to Transfer.” A party losing in the Court of Appeals may file a Petition to Transfer with the Supreme Court without first filing a rehearing in the Court of Appeals.

The Supreme Court considers the Petition to Transfer (and any opposition to it) and decides whether to take the case. Review by the Supreme Court is discretionary, which means the Supreme Court is not required to review the cases already decided by the Court of Appeals, and such review is rare. At its own option, the Supreme Court may direct the parties to “rebrief” the case, and may order additional oral argument. The Supreme Court’s decision on transfer, either by denying review, or taking and deciding the case, is final.

If the case was heard first by the Supreme Court (which means a sentence of death or life without parole was imposed), the losing party may ask the Court to reconsider its decision by filing a Petition for Rehearing. The Supreme Court’s decision on rehearing is final.

The direct appeal process in Indiana is concluded once the Supreme Court has made its final decision on transfer or rehearing. However, the appeal may conclude earlier if neither party petitions for a rehearing or transfer within the time allowed by the appellate rules.

Once the direct appeal process in Indiana is concluded, the losing party may ask the Supreme Court of the United States to review the case if that party can convince the U.S. Supreme Court that the trial court committed a federal constitutional error requiring reversal and which the Indiana appellate courts did not correct. The request to the U.S. Supreme Court to review a case is known as a “Petition for a Writ of Certiorari” and is entirely discretionary by the U.S. Supreme Court, which means the Court is not required to take the case. Such review is extremely rare. The U.S. Supreme Court’s refusal to review the case concludes the direct appeal process.

ADDITIONAL TYPES OF REVIEWS AND APPEALS

After the direct appeal stage is completed, or if a direct appeal was not pursued, defendants can have convictions and sentences reviewed a second time by the state court system through a “Petition for Post Conviction Relief” or “PCR Petition.” A PCR Petition is filed in the court that originally convicted and sentenced the defendant, and allows legal issues to be raised that were either unknown or unavailable to the defendant at the time of direct appeal.

The state is usually represented at this stage by the county prosecutor, although the attorney general’s office represents the state if the PCR Petition is a capital case. The trial court may hold a hearing on the PCR Petition and take evidence, but the court, not a jury, decides the case. If the court grants the PCR Petition, it may modify the conviction and/or sentence, order a new trial, or release the defendant. If the court denies the PCR Petition, the conviction and sentence stand.

The losing party may then appeal, and the Attorney General represents the state from that point on. PCR Petitions of convictions involving the death penalty or life without parole are appealed directly to the Supreme Court of Indiana; all other appeals are taken first to the Court of Appeals.

As with direct appeals, a party may attempt to appeal the PCR case all the way to the U.S. Supreme Court. The decision by the U.S. Supreme Court will terminate the PCR stage of the appeal process.

Once a defendant has made a direct appeal and completed PCR appeals, all state appellate procedures have been exhausted. But a review of the conviction and/or sentence by federal courts may still be requested. A defendant initiates federal review by filing a “habeas corpus” petition with the U.S. District Court (the trial court in the federal system) in an attempt to show that the conviction or sentence is a violation of constitutional rights.

The attorney general’s office represents the state in habeas corpus actions. The Federal District Court will decide the petitions without a jury and usually on the basis of the written submissions of the parties. If the District Court denies the habeas corpus petition, the conviction and sentence stand. If the District Court grants the petition, it may modify or vacate the conviction and/or sentence. The losing party may then take a federal appeal to the U.S. Court of Appeals in Chicago, which has similar briefing procedures to the state system. The party that loses in the U.S. Court of Appeals may petition the U.S. Supreme Court to accept such an appeal. If the U.S. Supreme Court accepts the case for review, it will be briefed and argued in Washington, and the court will issue its decision in the form of a written opinion.

Once the Supreme Court has spoken in the case, by refusing to hear the case or issuing an opinion on the legal issues, the appellate process has been completed.

ADDITIONAL VICTIM SERVICES

The Indiana Constitution gives victims of crime the right to be “treated with fairness, dignity and respect throughout the criminal justice process”. The Indiana Attorney General’s Victim Advocacy Program upholds that right in a number of ways:

Understanding the Criminal Justice System

Our criminal justice system consists of many procedures and mechanisms that can be complicated and confusing. As part of that system, the process of appeals is lengthy and complex. Victim advocates are available to address questions regarding the appellant process and to help victims gain a better understanding of how the process operates.

Notification of Proceedings

The attorney general’s office notifies victims of court proceedings and outcomes in the appellant process. Advocates can also keep victims informed of filings, oral arguments and decisions. However, contact from victim advocates may be infrequent depending on action in the case. For victims to stay informed, it is important that current address information be on file with the attorney general’s office.

Victim Service Referrals

Recovering from the trauma of a crime can be extremely difficult. However, a network of victim service providers is available to assist victims with the emotional consequences of crime. Our advocates can inform victims of services in their communities that can help in many ways.

COMMON QUESTIONS

1. Why does the defendant have the right to appeal?

The Constitution of Indiana gives everyone the right to appeal. Federal and state laws give defendants the additional right to have their convictions and/or sentences reviewed by state post-conviction and federal habeas corpus petitions.

2. Why wasn’t I contacted about the appeal?

The Attorney General’s Victim Advocacy Program requests information about victims from the victim advocate program at the county level, and from the Department of Correction Victim/Witness Services. Victims must register with their local prosecutor’s office and the Department of Correction plus provide their current address, contact numbers, name changes, etc. If the local victim advocates of the Department of Correction do not have this information, the Attorney General’s Victim Advocacy Program may be unable to learn about or contact the victims on appeal.

Also, the attorney general’s program began in October 1997, and victims in cases appealed before that time may not be known. However, once the attorney general’s office learns about a victim, he or she will have access to victim advocacy services.

3. Can I give a victim’s statement on appeal?

Unfortunately, no. An appellate court will examine the trial and sentence only for legal errors. No new evidence or information may be submitted.

4. Can I attend the hearing?

Generally, there is no hearing on an appeal. An appeal is conducted mostly in writing, with the attorneys filing briefs that the appellate court reads and considers. The appellate court then makes its decision by issuing a written opinion discussing and deciding the legal issues raised by the attorneys in their written briefs. In all death penalty cases, but rarely in other cases, the appellate court will have an oral argument where the attorneys orally present their cases to the appellate court, usually one half hour for each side. Only attorneys are permitted to make presentations to the court, although victims are permitted to attend and observe. A defendant is also permitted to attend if he is not incarcerated at the time of the oral argument.

5. Why does it take so long for a final decision?

There are more than 1,500 appeals filed each year, and each must be heard and decided by the appellate courts. In addition, there are several stages in the appellate process. For example, in the direct appeal stage, the case may be heard by the Indiana Court of Appeals. The losing party may then appeal to the Indiana Supreme Court. From there, the losing party may appeal to the Supreme Court of the United States, which completes the direct appeal phase.

At that point the defendant may seek another review of the conviction in the state courts by filing a petition for post-conviction relief in the original trial court of conviction, alleging errors and issues that were either unavailable or unknown at the time of the first direct appeal phase. The losing party in the trial court may then appeal the decision to the Court of Appeals, and then again to the Indiana Supreme Court, and then again to the U.S. Supreme Court. Once the post-conviction phase of the appellate process is completed, a defendant may seek review of a conviction in the Federal court – which is a separate court system. A habeas corpus petition is filed in the U.S. District Court (the federal trial court), which is then opposed by the state. Once the District Court decides the case, the losing party may take any appeal to the U.S. Court of Appeals in Chicago, where the case is briefed and heard as in the initial direct appeal phase. The party losing in the U.S. Court of Appeals may then seek to appeal to the U.S. Supreme Court in Washington, D.C. The several layers of courts and the complexity of the legal issues involved all contribute to the length of the entire process before any appeal may be concluded and a conviction and sentence considered final.

6. What is the difference between the county victim advocate program and the attorney general’s Victim Advocacy Program?

The county victim advocate works with victims at the trial level. A victim advocate for the attorney general’s office works as a liaison during the criminal appeal process. Advocates at this level act as liaisons between the deputy attorney general, prosecutors, county victim advocate, state agencies, other agency services and victims. The attorney general’s advocates review each case on appeal and request victim information from the county victim advocate once a defendant has filed an appeal. These advocates also correspond with the county victim advocate and the Indiana Department of Corrections Victim/Witness Services and victims via telephone, e-mail and letters.

The attorney general’s victim advocates provide information regarding victim issues and the appellate process. They also attend court proceedings on the state and federal levels on an as-needed basis.

7. Will the defendant get out of jail or prison during the appeal?

Not generally. The defendant usually remains in jail or prison while the appeal proceeds. However, in rare cases a defendant may be released on bond pending the appeal.

8. Where is the defendant located in prison?

A victim should always contact the Indiana Department of Correction Victim/Witness Services at 1.317.232.1756 or 1.800.447.5604 for the defendant’s location.

9. How can I file for violent crime compensation funds?

The crime must have taken place in Indiana and been reported to the police within 48 hours. Victims or survivors must have been cooperative in the investigation and prosecution of the crime, have out-of-pocket expenses of at least \$100 and an application for benefits must have been filed with the Violent Crime Compensation Office no later than 180 days for sex crimes and two (2) years for all other violent crime. Local county victim advocates should have the necessary applications. Also, the advocate will assist victims in completing and filing the application. If there is no advocate in your county, contact the Violent Crime Compensation Office at 1.317.232.7103 or 1.800.353.1484 (this service is provided for victims only).